

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

RUEBEN RAY SMITHERMAN,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:05-cv-1222
)	
PENNSYLVANIA LIFE INSURANCE)	
COMPANY, individually and as successor))	
in interest to EXECUTIVE FUND LIFE)	
INSURANCE COMPANY,)	
)	
Defendant.)	

UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED ANSWER

COMES NOW Defendant Pennsylvania Life Insurance Company ("Penn Life") and, pursuant to Rules 15 and 16 of the Federal Rules of Civil Procedure, files this Unopposed Motion for Leave to File Amended Answer. In support of this Motion, Penn Life states as follows:

1. On May 15, 2006, Penn Life filed its Amended Answer, a copy of which is attached hereto. At that time, Penn Life neglected to move for leave to amend pursuant to Federal Rule of Civil Procedure 15(a). On May 17, 2006, this Court entered an Order striking the Amended Answer for failure to make such a motion.

2. Counsel for Penn Life has conferred with Plaintiff's counsel and the latter does not oppose the filing of the Amended Answer.

3. The Court's Scheduling Order filed on March 1, 2006 states that all motions to amend pleadings or add parties shall be filed by May 15, 2006. Rule 16, Fed. R. Civ. P., states that "[a] schedule shall not be modified except upon a showing of good cause and by leave of the district judge."

4. Penn Life submits that good cause exists for modification of the Scheduling Order to permit Penn Life to file its Amended Answer. First, while Penn Life errantly filed its Amended Answer, it was done within the time permitted by the Scheduling Order for amendments to pleadings. Second, counsel for Plaintiff does not oppose Penn Life's filing of its Amended Answer. Third, permitting Penn Life to file its Amended Answer will not affect the other dates, including the trial date, established by the Court's Scheduling Order.

5. As such, granting Penn Life leave to file its Amended Answer will neither cause prejudice to the Plaintiff nor will it unnecessarily delay the resolution of this matter.

WHEREFORE, Penn Life respectfully requests that this Court grant its Unopposed Motion For Leave to File Amended Answer.

/s/ Will A. Smith
John A. Smyth III
Will A. Smith
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following listed person(s) by placing a copy of same in the United States mail, postage prepaid and properly addressed, this the 17th day of May, 2006.

Robert G. Methvin Jr.
McCallum & Methvin, PC
The Highland Building
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Birmingham, AL 35205

/s/ Will A. Smith
OF COUNSEL